

Howard Research and Development Corporation * Before the Zoning Board of
Petitioner * Howard County
* ZB Case No. 979M - PDP

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DECISION AND ORDER

On October 22 and 29, November 5, 12, and 19, December 10, 16, and 17, 1997, January 7, 14, 21, and 28, and February 4 and 18, 1998 the Zoning Board considered the petition of the Howard Research and Development Corporation for an amendment to the Zoning Map of Howard County so as to reclassify the approximately 516.5 acre subject property from the PEC and R-SC Zoning District to the PEC-MXD-3 and R-SC-MXD-3 Zoning Districts (PEC and R-SC with Mixed Use Overlay). The Board's decision in that matter is contained in ZB Case No. 979M - Rezoning.

On the above dates, the Zoning Board also considered the petition of HRD for approval of a proposed Preliminary Development Plan (PDP) and Criteria for a Mixed Use Development (MXD-3) for that area proposed for rezoning. The subject property is located on the west side of I-95 generally north of MD 216 and south of Gorman Road, east of I-95 generally north of Whiskey Bottom Road, west of Stephens Road, and south of Gorman Road, and three areas on the south side of Whiskey Bottom Road, and identified as Tax Map 47, Grids 2, 7, 8, 9, 13, 14, 15, 20, and 21; parcel 462, part of parcel 3, part of parcel 837, part of parcel 133, in the sixth Election District of Howard County.

At the beginning of the hearings on this petition, the Petitioner deleted a 5.5 acre PEC-zoned parcel from the petitions. This land is located at the intersection of Stephens Road

and Whiskey Bottom Road. This amendment reduced the area of the subject property for which the MXD-3 Overlay zoning and PDP approval was being sought from the original approximately 522.4 acres to the amended approximately 516.5 acres. The hearings on the rezoning request concluded on February 4, 1998, with summation occurring on February 18, 1998.

On May 27 and June 2, 1998, after the Board had voted to grant rezoning, it considered certain Board-generated proposed modifications to the Preliminary Development Plan and Criteria for the MXD Use Development. On June 2, 1998 the Board considered summation on the issues relating to the Board-generated modifications.

The notice of the hearing on the original petitions and the Board's proposed modifications to the PDP were advertised, the subject property was posted, and adjoining property owners were mailed notice of the hearing, as evidenced by the certificates of advertising, posting, and mailing to adjoining property owners, all of which were made part of the record. Pursuant to the Zoning Board's Rules of Procedure, all of the reports and official documents pertaining to the petition and the Board's proposed modifications, including the petition, the Technical Staff Reports of the Department of Planning and Zoning, and the Planning Board's Recommendations, were made part of the record. Both the Department of Planning and Zoning and the Planning Board recommended approval of the petition for rezoning and the original PDP petition. The Department of Planning and Zoning recommended approval of the Zoning Board's proposed modifications of the Preliminary Development Plan. The Planning Board recommended approval of these proposed modifications except for the Employment designation for the area of the modified PDP adjacent to the Maryland-Virginia Milk Producers property, which the Planning Board found to be inappropriate.

The Petitioner was represented by James Lano, Esquire. Several protestants appearing in opposition to the petition were represented by Thomas Dernoga, Esquire. Mr. William Norton appeared in opposition, representing himself.

After careful evaluation of all the information presented, including summation presented to date, the Zoning Board of Howard County makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Petitioner originally requested approval of a Preliminary Development Plan and Criteria for a Mixed-Use Development (MXD-3) for approximately 522.4-acres of land located on the east and west sides of I-95, in the northwestern and northeastern quadrants of the interchange of MD 216 and I-95. Throughout the hearings on these petitions, the subject property was referred to as consisting of the "West tract", the 273.4 acre parcel west of I-95 (Area "A" in the petition) and the 9.1 acre parcel west of I-95 (Area "C" in the petition), and the "East tract", the combination of predominantly PEC-zoned parcels east of I-95, containing 228 acres of PEC and 6.5 acres of R-SC-zoned land (Areas "B", "D", "F", and "G" in the petition). The original petitions heard by the Zoning Board were amended so as to delete approximately 5.5 acres of PEC-zoned land from the petitions along Whiskey Bottom Road (Area "E" in the petition). This amendment to the petitions reduced the area requested for rezoning and PDP approval to approximately 516.5 acres, and reduced the number of dwelling units proposed on the PDP from 1410 to 1395 dwelling units, at the same proportion of 2.7 dwelling units per gross acre.

2. Mr. Alton Scavo, Senior Vice-President of the Rouse Company, provided most of the

testimony for the Petitioner as to the issues of the proposed PDP and how the proposal relates to the criteria for decisions on such plans in the Howard County Zoning Regulations. When other witnesses' testimony is referred to, they will be so identified. Mr. Scavo's testimony is summarized as follows on the noted general areas relevant to the petition. Most of the testimony provided by Mr. Scavo relating to the issue of approval of the PDP under the criteria of Section 127 Zoning Regulations was undisputed by the protestants and/or was corroborated by information in the Department of Planning and Zoning's Technical Staff Report or by other testimony before the Board in this case. Those facts, which the Board finds to be established include the following:

a. In the original PDP for the subject property a specific land use map was proposed as part of the petition. The Department of Planning and Zoning provided a detailed description of the location and orientation of the various proposed land uses on the original petition on page 14 and 15 of the March 6, 1997 Technical Staff Report. The Board accepts these descriptions and adopts them as its own for purposes of this case. This proposed PDP submitted with the petition was amended by the Petitioner as stated above based on the deletion of the 5.5 acres of PEC land along Whiskey Bottom Road. This PDP, as revised by the Petitioner (Petitioner's Exhibit 10A), was unchanged from the original PDP except for the deletion of the 5.5 acre parcel from the petition and the consequential reduction of the number of proposed dwelling units from 1410 to 1395.

This revised PDP proposed the various land uses in the following proportions:

Single Family Detached - 182.6 acres - 35.3%

Other Residential - 62.7 acres - 12.1%

Employment - 88.8 acres - 17.2%

Open Space - 182.8 acres - 35.4%

The residential units were proposed by Petitioner in the following proportions:

Single-Family Detached 695 units 49.8%

Single-Family Attached 449 units 32.2%

Apartments 251 units 18.0%

b. At a March 26, 1998 Board work session on the PDP, the Board directed the Petitioner to demonstrate on a Board-initiated modification of the PDP a further revised PDP, referred to as an Alternate PDP, a Plan that would increase the percentage of Employment Land Use to 30%, reduce the dwelling unit total from 1395 to 1200 with 60 Moderate Income Housing Units, reduce the number of Single-Family Detached Units from 695 to 450 on approximately 120 acres, and increase the number of single-family attached units from 449 to 500, and retain the 250 apartments on approximately 60 acres. The Board also asked the Petitioner to respond to several other Board issues in its proposed Alternate PDP, issues that will be summarized and addressed later in this decision. The Alternate PDP numbers and percentages for proposed Land Use are as follows:

Single-Family Detached 117 acres 22.6%

Other Residential 62 acres 12%

Employment 154.9 acres 30%

Open Space 183 acres 35.4%

The Alternate PDP numbers and percentages for residential units are as follows:

Single-Family Detached	450 units	37.5%
Single-Family Attached	500 units	41.7%
Apartments	250 units	20.8%

The Board proposed these changes based on testimony it heard, mostly from protestants, that the County needed more Employment land use to be developed on this property in order to balance the ratio of commercial/residential development closer to the 25% / 75% called for in the General Plan, that the proposed residential development along I-95 was inappropriate due to highway noise, and that Western Focal Point was inadequate to serve the communities to the east of I-95.

c. The Board heard testimony on May 27, 1998 only on these Board-initiated changes to the PDP and the previously mentioned issues. This information supplemented the voluminous testimony heard on the original revised PDP over 14 nights of hearings from October 22, 1997 through February 18, 1998. As Mr. Scavo testified, and as is described in the Petitioner's response to the Board's request for the depiction of the Alternate PDP , the Alternate PDP is the same as the original revised PDP, in terms of Land Use analysis, except that the residential land use area adjacent to the Milk Producers' property has been changed to Employment in order to increase compatibility, certain residential areas near I-95 on the West tract have been changed to Employment in to order remove residential uses from an area of highway noise, and a second Focal Point has been added on the East tract to facilitate community pedestrian access to recreation and other amenities, and Open Space areas have been added in other areas to replace Open Space areas lost to the increased Employment in those areas. Therefore, much of the testimony relating to the original revised PDP, and the information

contained in DPZ's Technical Staff Report on it, is relevant to the Alternate PDP. The Board will, however address the effect of the Board-initiated changes to the PDP, particularly as they relate to traffic and road and compatibility issues, through its findings as to the testimony on, and evaluation of, the Alternate PDP. The Board accepts and adopts as its own the description of the location and orientation of the land use areas on the West and East tracts of the Alternate PDP as provided on page 3 of the May 1, 1998 Technical Staff Report of the Department of Planning and Zoning. The Board will, in this decision, be evaluating and making findings on the Alternate PDP, based on testimony heard throughout the hearings on this matter. All references to "the PDP" hereafter in this decision shall refer to the Alternate PDP. References to the original revised PDP heard by the Board in the pre-May 27, 1998 hearings shall be specifically identified and referred to as such.

d. Petitioner testified that the entire area proposed for and granted MXD Overlay zoning, approximately 516.5 acres of land with underlying zoning of PEC and R-SC, has been submitted as part of the PDP petition pursuant to Section 127C.2. of the Howard County Zoning Regulations ("HCZR"). The Board finds that the PDP encompasses over 40% of the area of all contiguous MXD-zoned parcels as required by Section 127C.2.a of the HCZR.

e. The proportion of Land Uses contained in the PDP, as indicated above, are 34.6% Residential, 35.4% Open Space, and 30% Employment. The Board finds that these percentages meet the minimum percentage of gross area of the mixed-use development requirements contained in Section 127C.3 of the HCZR.

f. The PDP proposes two Focal Points. The first is the Primary Focal Point/Activity Center located on the West tract near the intersection of Gorman Road and I-95,

which may incorporate a renovated Stephens house, that is proposed to function as a retail center with a supermarket and other businesses offering goods and services. This Primary Focal Point will include plazas, greens, and other public areas, and may include active recreation facilities, all for use by the community. The second, Complementary Focal Point, to be located on the East tract in the area to the north of the BGE right-of-way, between the internal road and open space in the Employment area, will provide uses and amenities, including a park and public spaces, day care center, pre-school, and recreation facilities, but is not proposed to include a major retail component. This Focal Point was proposed in response to protestant and Board concerns concerning the difficulty of pedestrian access to the West tract Focal Point for those living east of I-95. The Board finds that the splitting of the subject property into two main land masses, the West and East tract, makes the provision of two Focal Points more appropriate in terms of community cohesion and individual focus for each tract.

g. The PDP proposes 117 acres of Single-Family Detached Land Use and 62 acres of Single-Family Attached and Apartments Land Use for a total of 179 acres. 1200 dwelling units are proposed on the approximately 517 acre gross area of the PDP parcel, so that the maximum residential density proposed on the PDP is 2.32 dwelling units per acre. The Board finds that this proposed residential density is less than the maximum residential density provided in Section 127C.6.a of the HCZR for MXD-3 Districts, but exceeds the threshold of 2.3 dwelling units per acre, thus requiring the provision of Moderate Income Housing Units ("MIHU") at a rate of 5% of the total number of dwelling units pursuant to Section 127C.6.b of the HCZR. Petitioner proposes 60 MIHU on the PDP in compliance with this section of the HCZR. In addition, Petitioner proposes on the PDP that parcels recorded in the Single-Family

Detached area will range in density from less than two up to five dwelling units per acre, and that parcels recorded on the other Land Use area will range in density from five to twenty dwelling units per acre.

The number of Apartments Land Use proposed on the PDP, 250, is well below the 30% of total number of dwelling units proposed on the PDP (1200) , in compliance with Section 127C.6.c of the HCZR.

h. Petitioner proposes a maximum Floor Area Ratio ("FAR") of 0.23 for the 154.9 acres proposed on the PDP, with a maximum FAR of 0.35 for any individual parcel.. This results in a proposed maximum commercial floor area of 1,551,912 square feet covering all Employment Land Use areas, including the non-open space portions of the Focal Points/Activity Center. This proposed FAR is well below the maximum FAR permitted under Section 127C.7.a of the HCZR. In response to the Board-generated proposed PDP modifications, Petitioner proposes 1,251,000 square feet of Employment uses staged over a ten year period for purposes of the traffic analysis, in addition to the approximately 100,000 square feet of retail uses, including a gasoline service station, fast food restaurant, and restaurants.

Under Section 127C.7.b.,c.,and d. of the HCZR Petitioner is permitted a maximum floor area of 155,070 square feet for retail and service uses based on a 300 square feet per gross acre computations, and 354,240 square feet of warehouse/light manufacturing uses based on a maximum 15 % of Employment Land Uses for warehouses and light manufacturing multiplied by a 0.35 FAR for any individual parcel. These are maximums permitted under the MXD Regulations. In its PDP, Petitioner proposes, at this time, only approximately 100,000 square feet of retail, including a 50,000-55,000 square foot supermarket in the Retail Center. Mr.

Ragland testified that his market analysis showed that a store of this size would be supported by the market, and that if job growth continued as projected, there would be a need for 450,000-500,000 square feet of additional Employment Uses over the build-out of this project.

The uses proposed to be permitted as a matter of right in the Employment areas in the PDP Criteria include all uses permitted as a matter of right in the POR, B-1, and M-1 Districts, and all the other enumerated uses in Section 127C.4.b, as is permitted by that section.

The Petitioner presented evidence that two full time jobs would be created for each 1,000 square feet of floor area of retail uses, and four full time jobs would be produced for each 1,000 square feet of floor area in other employment uses. Under the maximums permitted under the proposed Employment Uses permitted under the PDP, those estimates would yield approximately 5,897 jobs produced by the PDP development.

i. 183 acres of Open Space Land Use is proposed on the PDP, designed in a network of both passive and active recreation that link together all the other land use areas. The PDP proposes Open Space Land Use designed to incorporate many of the environmentally sensitive features on the subject property, including forest stands, stream valleys, and wetlands. In addition, an inner and outer circular pedestrian pathway system is proposed on the PDP that coordinates and relates to those Open Space Land Use areas, sidewalks, and the other land use areas, particularly the Focal Points and Activity Center. In addition, the Open Space Land Use areas as shown on the PDP provide connections to existing and planned open space area on adjoining land. Some of the Open Space Land Use area shown on the original revised PDP to the west and southwest of the Activity Center was subsumed into the augmented Employment Area located along I-95 pursuant to the Board-generated proposal for increased Employment

Land Use along I-95. The area of Open Space lost to the above-mentioned Employment Land Use was replaced with an additional west to east corridor of Open Space Land Use in the West tract, and an additional Open Space Land Use area on the west side of Stephens Road. The declared permitted uses in the Open Space Land Use Areas in the PDP are proposed to be "uses which do not involve any extensive coverage of land with structures including but not limited to parks, playing fields, tennis courts, golf courses, pools, pathways, any other recreational uses, and environmental facilities such as stormwater management facilities or water quality facilities." The PDP also proposes that buildings and associated parking lots are also permitted uses in the Open Space Land Use areas if they are proposed for public , non-profit, or homeowner's association uses. The PDP also proposes normal and customary accessory uses.

The overall design of the PDP includes the breaking up of development into development pods by the Loop road, enabling individual identity for each residential community. The Petitioner has proposed reforestation of natural areas, and the location of neighborhood parks on natural ridges, with development surrounding those parks. The Petitioner has generally located Open Space or Single-Family Detached areas at the periphery of the site, except for the Employment Land Use across from the Milk Producers property as directed by the Board, in order to provide maximum compatibility with adjoining uses.

The Board finds that the open space network proposed on the PDP connects to existing and planned open space adjoining the PDP, particularly the Murray Hill Middle School and the adjoining proposed elementary school. The Board finds that major environmental features are protected on the PDP, principally through the location of the 183 acres of Open Space Land Use on the PDP so as to incorporate almost all of those environmental features. The

Board finds that the 35% of the PDP devoted to Open Space land uses will provide more than adequate useable land for the location of parks and recreational facilities. The actual location of those parks and facilities is intended to be accomplished at the Comprehensive Sketch plan stage of the MXD development. The Board also finds that the 183 acres of Open Space Land Use on the PDP provides more than enough land for any needed public facilities, the details of which are appropriately addressed at the Comprehensive Sketch Plan stage.

j. The Petitioner, as indicated in the testimony of both Mr. Scavo and Mr. Wells, proposes what was commonly referred to as "the Loop road" as the major road improvement that it was committed to providing, at its expense, as part of its proposed development. The Loop road as shown on the PDP was intended by the Petitioner to serve as the collector road shown on the 1990 Howard County General Plan. The Loop road as proposed on the PDP is shown to be a Major Collector Road in accordance with the proposed alignment of the loop road shown on the General Plan. Petitioner indicated that the only differences in the proposed roads' alignments were that the PDP Loop road alignment was not proposed to bisect the Milk Producers' property as was the General Plan alignment, and it avoided several wetlands crossings on the East tract unlike the General Plan alignment.

Mr. Wells noted that the PDP Loop Road still satisfied the function of the General Plan loop road to serve as an access for the development and collector road for the entire area.

There are two segments of the Loop road on the PDP that are not located on Petitioner's property, a segment from the western boundary of the West tract across the Milk Producers' property to MD 216, and another segment from Whiskey Bottom Road at the south of

the East tract across a vacant PEC property to MD 216. The Petitioner provided documentation that it had control of, and/or agreements with the property owners for the right to use, both of those areas for the construction of the PDP Loop road. Petitioner indicated that the Milk Producers had indicated by letter its willingness, by resolution of its Board, to cooperate with the Petitioner in this matter in order to avoid the loop road alignment shown in the General Plan proposed to bisect its property. Except for a portion of the Loop road to be located through the West tract, the rest of the Loop road construction would involve improvements to existing Gorman, Stephens, and Whiskey Bottom Roads. Another minor loop road connecting Stephens Road and Gorman Road is shown on the PDP, in addition to proposed roads providing potential access points to existing intersections.

k. The Petitioner presented testimony through Mr. Joseph Necker, HRD's Director of Engineering, that the subject property is located in the Planned Service Area for public water and sewerage and in the Metropolitan District, and that public water and sewer lines are adjoining and available to the subject property. Mr. Necker testified that MXD development does demand greater capacity for public water and sewerage than PEC development, but that the greater capacity can be accommodated. Mr. Necker noted that public water and sewerage facilities in Howard County are planned for based on development contemplated under the General Plan, not base on land zoned in the last comprehensive zoning.

3. Some of the testimony in these hearings relating to HCZR Section 127D.7. Criteria was disputed, including testimony related to staging, phasing and other traffic and road issues, public transit facilities, and integration of use and related project design issues. In particular, in its Board-generated PDP modification proposal, the Board asked the Petitioner to address on the

PDP several phasing and staging issues including the phasing and/or staging of residential development over a 10 year time frame, the timing of SHA approval of the Route 216-Loop road intersection improvements in relation to the proposed development, the percentage of development that may occur prior to loop road connection to Route 216, and the percentage of recorded employment lots to be completed prior to the completion of residential employment. The testimony given on behalf of the Petitioner on phasing and related traffic and road issues is summarized below:

a. Mr. Martin Wells, the traffic consultant for the Petitioner, testified as to the traffic issues regarding MXD District criteria. The evidence that the Board considers in this decision regarding phasing and related traffic and road issues is based on the original December 1996 Traffic Report, and Mr. Wells' testimony before the Board, particularly regarding his February 3, 1998 Traffic Analysis, and May 26, 1998 Traffic Analysis. This latter analysis addresses the Board-generated proposed modifications to the PDP, which is the PDP addressed in this decision. However, as stated above in this decision, much of the information provided in the earlier traffic study and Mr. Wells' earlier testimony remained relevant to the bulk of the PDP, which remained unchanged by the Board-generated modifications.

b. Mr. Wells' development assumptions in his traffic evaluation included:

- 1,200 residential units in the amounts provided in finding of fact 2.b.
- 1,251,000 square feet of Research and Development space on 154.9 acres
- 92,000 sq. ft. of retail space, an eight-pump service station with convenience market and car wash, a 4,000 sq. ft. fast food restaurant with a drive-in window, and a 150 seat restaurant.

- Development to commence in 2000.

- Development to occur over a uniform pace over a 10 year period.

c. Mr. Wells' traffic study assumptions included the following:

- Background traffic growth was set at 3% per year for the first 3 years and 6 % per year thereafter as required by the Howard County Design Manual.

- The Critical Lane analysis was based on existing traffic counts and discussions with Howard County traffic officials.

- The trip generation rates used were those called for by the Institute of Traffic Engineers (ITE) unadjusted for Howard County income levels.

- There would be more internal trips and more balanced in bound-out bound tips in MXD than PEC development.

- There would be generally equal development both east and west of I-95 and between residential and non-residential development.

d. Mr. Wells testified that the Howard County Design Manual, Section 4.2., defines the traffic study area for purposes of the Adequate Public Facilities Ordinance (APFO) test as "an area up to one road mile in all directions from each project entrance on a County or State road, but not beyond the intersection of a major collector or higher classified road with a major collector or higher classified road." Mr. Wells testified that this definition yielded a traffic study project impact area for the subject property's development under APFO to include four intersections: Gorman/Murray Hill Road, Gorman Road/Skylark Blvd., Gorman/Stephens Road, and Stephens/Whiskey Bottom Road. Mr. Wells testified that Petitioner had included the four following additional intersections in its MXD traffic study, although not required to do so by

APFO requirements: MD Route 216/Leishear Road, Gorman/Leishear Road, Whiskey Bottom/All Saints Road, and MD Route 216/All Saints Road.

e. Mr. Wells testified that the following road improvements were assumed to be made and paid for by the Petitioner as part of the traffic study:

1. MD Route 216/All Saints Road

- a. Construction of dual eastbound left turn lanes on MD Route 216.
- b. Construction of dual southbound left turn lanes on All Saints Road.
- c. Re-striping northbound All Saints Road to provide separate left, through, and right turn lanes.
- d. Modification of the existing traffic signal.

2. MD Route 216/Leishear Road

- a. On southbound Leishear Road, strengthening of the existing shoulder to provide separate through and left turn lanes.
- b. Extension of the existing northbound-to-eastbound right turn lane and operation under free-flow conditions.

f. Mr. Wells' conclusion in his traffic study, based on the above-stated assumptions, was that 35% of the total trips generated by the PDP proposal could be accommodated at Levels of Service (LOS) considered adequate under Howard County standards, with the proposed developer-provided, at-grade improvements to the MD Route 216/Leishear Road and Maryland Route 216/All Saints Road intersections, but without the planned Loop Road improvements.

g. Mr. Wells acknowledged that there were some minor errors in the trip distribution figures used in his traffic study as testified to by protestants, but that the trip statistics errors did not affect any of his final conclusions as expressed above. Mr. Wells also acknowledged that the Board-generated modifications to the PDP that almost doubled the amount of Employment Use land proposed, caused the A.M. peak hour traffic to increase 46%, the P.M. peak hour traffic to increase 26%, and the ADT to increase 22% over the traffic in the original revised PDP, but that the overall conclusions, as to site generated trips that could be managed according to the traffic analysis, remained the same. Mr. Wells indicated that this was true because the increase in traffic caused by increased Employment uses were in the opposite direction than the peak hour traffic problems on the roads - that is, that the increased Employment traffic would be in-bound A.M. and out-bound P.M., while the existing peak hour traffic congestion problems on area roads was out-bound A.M. and in-bound P.M.

h. Mr. Wells and Mr. Scavo testified that the traffic study did not deal with the State's planned improvements/realignments of MD Route 216. Both witnesses acknowledged that those improvements were not assured since only planning and engineering money, but no construction money, had been budgeted by the State for the MD Route 216 improvements. Both witnesses also acknowledged that the State had not yet approved the intersections/interchanges of the proposed Loop road with MD. Route 216. It was both witnesses' testimony that the State only reacts to applications for approval that contain specific plans. Mr. Scavo indicated that once the PDP was approved, the Petitioner would be able to prepare the specific plans for the intersections/interchanges of the Loop road and MD Route 216 to the State for its approval. Mr. Scavo testified that the proposed PDP development would act as a catalyst for the approval of the

MD Route 216 improvements including its connection to the Loop road.

Mr. Wells and Mr. Scavo testified that any potential issue as to whether the MD Route 216/Loop road intersections/interchanges would meet State requirements as to distance between the I-95/MD Route 216 interchange ramps would have to be addressed when the specific plans for the Loop road/MD Route 216 intersections/interchanges were proposed. Mr. Wells indicated that there were several examples of distances between intersections/interchanges in and approved by the State of Maryland that were similar to potential proposed distances involved in this case.

h. Mr. Wells maintained that the traffic study intended by the HCZR to be conducted at the PDP stage of the MXD development was a "generalized traffic analysis", pursuant to Section 127D.3. of the HCZR, and that his analysis in effect went beyond those requirements, and used APFO requirements, including the study of, and proposed improvement of roads that would not be required under APFO, as part of its phasing plan proposed to meet the criteria of Section 127D.7.b. of the HCZR. Mr. Wells stated that the actual, detailed traffic analysis, using Design Manual standards, is intended by the MXD Regulations to be conducted at the next stage of review in the MXD District, the Comprehensive Sketch Plan stage of the approval process outlined in Sections 127E.1.g. and 127E.3.c. of the HCZR. Mr. Wells noted that the proposed development considered in this case is still required to meet the applicable requirements of the APFO as provided in Section 127E.3.d. of the HCZR.

4. The testimony presented by the protestants on phasing and related traffic and road issues is summarized as follows:

a. There was considerable testimony from protestants regarding the increased,

unwanted traffic that would result from the Petitioner's proposed development of the subject property. However, the only testimony presented by any protestant as to the detailed conclusions in Mr. Wells' traffic analysis was the testimony presented by a traffic consultant for the Gould family, Mr. Mickey Cornelius. Mr. Cornelius testified that road links and interchanges were not dealt with in Mr. Wells' traffic study, and that he believed such an analysis was required to be done under Section 127D.7.b. of the HCZR, according to Design Manual criteria, despite the difference in language between Sections 127D.7.b and 127E.3.c of the HCZR, and despite the fact that there were no traffic requirements for the MXD District in the Howard County Design Manual. Mr. Cornelius also indicated that it was his opinion that the planned MD Route 216 realignment should be considered in any traffic study regarding any development of the subject property.

Mr. Cornelius acknowledged that any proposed development was controlled by the APFO requirements applicable to this property. Mr. Cornelius concluded by indicating that no more than 30% of the proposed development should occur prior to completion of the Loop road to MD 216 based on the roadway link capacity of Gorman Road. Mr. Cornelius also offered the suggestion that the Board may want to require construction of the Loop road prior to any PDP development based on the existing safety deficiencies of Gorman and Murray Hill Roads.

5. The Board makes the following findings as to phasing and the related issues of traffic and roads:

a. The Board finds that the most appropriate phasing requirements to apply, in order to meet the intent of Section 127D.7.b. of the HCZR, commonly referred to as the MXD

phasing requirements, are those addressed by the plan proposed by the Petitioner. The Board finds that the criteria of Section 127D.7.b. of the HCZR is based on the submission requirements of Section 127D.3.c. of the HCZR, which refers to submission of a "a generalized traffic analysis for the MXD in relation to major road improvements proposed in the General Plan, and a plan. . . in relation to the road improvements." "A traffic impact analysis, prepared in accordance with the Howard County Design Manual" and an actual phasing plan are not required to be submitted to the Planning Board until the Comprehensive Sketch Plan stage of a MXD development pursuant to Section 127E.1.g. of the HCZR. The Petitioner, through its submission of its phasing plan, detailing the assumed development and intersection improvements according to Design Manual/APFO standards, and the proposed amount of traffic to be permitted under the plan based on those assumptions, has presented a more detailed traffic analysis than is required at the PDP stage of development under the MXD Regulations. The Board finds that, under this standard, the Petitioner has presented sufficient documentation that the Mixed Use development as proposed to be phased will meet the corresponding phasing of road improvements pursuant to Section 127D.7.b. of the HCZR.

b. The Board accepts the evaluation and conclusions of the Petitioner's traffic study - that approximately 35% of the trips generated by the MXD PDP can be accommodated under County road and traffic standards, and are to be permitted by this Board, prior to the completion of the Loop road connection to MD Route 216. The Board is cognizant of the fact, however, that the 35% figure cited in the Petitioner's traffic analysis was acknowledged to be an approximation figure based on an admittedly somewhat generalized analysis. Therefore, the Board finds that the 30% figure called for in the protestants' traffic study may be a more

appropriately conservative figure upon which to base the phasing requirements at this early stage of the MXD approval process.

c. Inherent and contained in the Board's general phasing finding are several other more specific findings relating to phasing. First, the Board finds that it is appropriate to use the standard ITE trip generation rates in the general traffic analysis at this stage of the MXD process, especially given the evidence that those rates are applied by the County in the APFO process. Second, the Board recognizes that the phasing requirement applied in this decision was tied to a percentage of trips generated by the development instead a percentage of the development. The Board resisted using a percentage of development standard because its use was determined to be infeasible and inflexible for the Petitioner and uncertain as to meaning for the Board and the County. However, the Board also recognizes that use of the percentage of trips generated phasing standard will, of course, require the application of that standard by the Department of Planning and Zoning and/or the Planning Board in the Comprehensive Sketch Plan decision process and APFO process.

d. The Board's findings on the phasing plan are made with cognizance of the protestants' concerns regarding the impact of the pre-Loop Road traffic on area roads, especially segments of Gorman and Murray Hill Roads, segments of which are scenic roads. However, the Board finds that these concerns are alleviated to some extent, by Petitioner's commitment, made part of its binding phasing and staging plans, that no commercial/Employment development would occur west of I-95, except in connection with the Focal Point, until the west Loop road/MD Route 216 connection was completed. The Petitioner committed to the development of the Western Focal Point as soon as possible, definitely within the initial pre-Loop road stage of

development.

The Board finds that conditions proposed by protestants that would prohibit improvements on scenic roads, that would require the provision of the Loop road/MD Route 216 connection prior to any other road improvements, or prior to any development, would be contrary to the Petitioner's traffic study and the intent of the phasing requirement contained in Section 127D.7.b. of the HCZR.

6. The testimony given by the Petitioner and protestants on the staging issue, together with the Board's findings on that issue, is summarized as follows:

a. The Petitioner testified that the Staging Plan proposed as part of the PDP calls for the 1200 proposed dwelling units to be developed at no more than 120 per year, beginning in the year 2000, and also calls for at least 20% of the Employment Land Use acreage to be recorded before the recorded residential acreage may exceed 50 % of the total residential acreage. As stated above, the Petitioner also committed to the development of the Western Focal Point as soon as possible, definitely within the pre-Loop road stage of development. This proposed Staging Plan exceeds the more indefinite staging requirements of Section 127C.3d. of the HCZR. The Petitioner proposed that any unused allocation of the 120 dwelling units per year would be permitted to gather for use in subsequent years. The Board finds this process to be reasonable, and further finds that it would be appropriate, to encourage the early provision of the M.I.H.U. in the development of the PDP, to exempt the M.I.H.U. from the 120 dwelling unit per year allocation requirement in the Staging Plan.

b. The protestants called for more detailed staging plans that would specify the timing and location of units by unit types, and that would specify certain requirements as to

integration and/or mixing of uses in the same structure along the lines of Old Town Alexandria or Georgetown. While the Board agrees that these are laudable objectives, it finds that the PDP stage of the MXD process is premature for imposing such requirements. The Planning Board, in the Comprehensive Sketch Plan process, may be amenable to the imposition of such requirements in order to provide a greater integration of uses.

The protestants also called for a specific staging requirement that would tie a certain minimum percentage of employment development to a percentage of residential development. The protestants also asked that a staging condition be imposed that would require completion of a certain percentage of non-residential development by a certain time or stage of residential development, instead of requiring recordation of development pursuant to Section 127C.3.d. of the HCZR. The Board finds that these conditions would go beyond the intent of the staging requirements of the HCZR, and that they would be unnecessarily inflexible requirements to impose that may prove to be infeasible, and obstructive to the development of the subject property. The Board finds that the staging plan does establish the earliest reasonable time for development of the primary Focal point and the mix of uses proposed on the PDP, especially in light of the Board-generated modifications imposed by the Board that greatly increase the proportion of Employment Uses on the PDP.

7. The protestants raised several other concerns on a variety of issues relating to the PDP, concerns summarized below, with Board findings:

a. The protestants called for a maximum of 800 dwelling units on the subject property even though such a number would reduce the density on the PDP to 1.6 dwelling units per gross acre. At the same time the protestants called for imposition of the 5% MIHU

requirement even though the requirement is triggered under the HCZR only if 2.3 dwelling units/gross acre density is achieved.

b. The protestants also called for the moving of the Focal Point to a more central location on the Western tract, despite the Petitioner's increase of Employment Use areas on the PDP in response to previous protestants' concerns expressed as to the need for more Employment Uses on the PDP, specifically at the visible and accessible location along I-95. The protestants also asked that the Columbia Association be prohibited from managing open space area in the PDP, and that the PDP specify that pathway connections to MARC line stops be provided. The Board finds that the latter suggestion may be appropriately addressed to the Planning Board when the specific development of the subject property is proposed in the Comprehensive Sketch Plan. In addition, the Board does find the Loop Road to be an appropriate location for extension of lines for public transportation, particularly bus lines. The details of this matter are best addressed in the Comprehensive Sketch Plan stage or later stages of the development of this MXD development.

c. As to all the other above concerns, the Board finds that expression of any of them in conditions and/or requirements of the PDP, would not be in compliance with previous protestant testimony and/or specific requirements and/or the intent of the MXD Regulations.

8. The Board notes that there was a great deal of testimony presented in this case regarding the comparative impact, particularly the traffic impact, of MXD as opposed to PEC development. The Board further notes that it did take the general qualities of the two zoning categories into account, including the impact of any possible development under MXD vs. PEC, in the process of deciding the rezoning case issue of whether to add the MXD Overlay

development option to the existing underlying zoning option available under PEC zoning. And the Board believes there was credible evidence presented in this case that any substantial PEC development in this case would have a greater traffic and incompatibility impact on the surrounding roads and area than the proposed MXD development. However the Board finds that it must determine the issues in Section 127D.7., including compatibility, without regard to the possible PEC development impacts of the subject property. MXD Overlay zoning merely provides a development option. It is the Petitioner's choice as to whether to pursue that option.

9. The Board finds that the Petitioner has established that its proposed Preliminary Development Plan and Criteria, with the included conditions and commitments made by the Petitioner, will satisfy all of the criteria of Section 127D.7. of the HCZR, and the Board makes the following findings of fact, in addition to those findings previously made in this decision, as to the criteria of Section 127D.7. of the HCZR:

a. The plan and criteria will foster orderly growth, integration of uses, and development consistent with the purposes of the MXD District, pursuant to Section 127D.7.a, for all the reasons specified in the other specific findings;

b. The Mixed Use Development's Phasing plan as proposed in finding No. 3 will pursuant to Section 127D.7.b. of the HCZR meet the phasing requirements of Section 127D.7.b. of the HCZR based on the Board's findings No. 3, 4, and 5 ;

c. The Staging Plan proposed by the Petitioner as proposed in finding No. 6 will pursuant to Section 127D.7.c. of the HCZR establish the earliest reasonable time frame for development of the focal point and the proportionate mix of land uses proposed on the PDP for the reasons stated in finding No. 6;

d. The plan and criteria on the PDP are consistent with all applicable environmental policies and requirements pursuant to Section 127D.7.d. of the HCZR based on finding No. 2.i. and based on the Board's finding that the environmental features are almost entirely located within the 183 acres of Open Space Land Use provided on the PDP. The Board finds that the PDP Loop road alignment is designed to avoid several stream crossings that would be required following the General Plan alignment for the Loop Road, and that this is consistent with environmental policies;

e. The minimum area, proportion of uses and the density or intensity of development will be consistent with the requirements of Section 127C. pursuant to Section 127D.7.e. of the HCZR based on finding No. 2. The Board also finds that the Petitioner originally proposed a PDP that was much more residential, particularly single-family detached residential, in character, and that the PDP, as considered in this decision, is more Employment Use oriented, in terms of proportion of uses and intensity of uses, based on Board-generated proposed modifications to the PDP, which in turn, were based on protestant-expressed concerns for more Employment Use development to be provided on the PDP;

f. The relative proportions of residential, employment, and open space uses will be appropriate to the area surrounding the MXD District pursuant to Section 127D.7.f. of the HCZR based on findings No. 2 and 9.e. The Board also notes that the original revised PDP submitted by Petitioner was more similar to the largely residential surrounding area, and that the PDP was proposed to provide a greater proportion of Employment use areas pursuant to Board and protestant input;

g. The development proposed on the PDP pursuant to Section 127D.7.g of the

HCZR will include at least one integrated focal point of sufficient size and variety of land uses to be a distinct focus for the community based on finding No. 2.f. The Board finds that the provision of the second, complementary Focal Point on the Eastern tract provides the community focus for that community, and is responsive to the concerns that the pedestrian access over I-95 was insufficient to allow the Western Focal Point to be a focus for the Eastern tract residential communities;

h. The location of land designated on the PDP for retail centers pursuant to Section 127D.7.h. of the HCZR is appropriate for retail and personal service uses which will serve the local neighborhood or community based on finding No. 2.h. and 7.b. and c. The Board also finds that the proposed size of the retail area is less than is permitted under the HCZR for retail uses and that its location as part of the Focal Point's planned utilization of a restored Stephens House is particularly appropriate;

i. The PDP pursuant to Section 127D.7.i. of the HCZR will provide a mix of housing uses based on finding No. 2, 9.e., and 9.f. The Board specifically notes that the 2.32 dwelling unit/ gross acre density on the PDP ensures the provision of 60 M.I.H.U. as part of the housing mix ;

j. The proposed PDP pursuant to Section 127D.7. j. of the HCZR enables the provision of public transit facilities and routes integrated into the development based on finding No. 7.b.;

k. The PDP, pursuant to Section 127D.7.k of the HCZR, proposes an intensity and scale of land use, as determined by proposed densities, FAR limits, and other requirements that is appropriate in relation to the environmental constraints of the site and the character of

existing and planned development in the vicinity of the site based on finding No. 2, 9.d., 9.e., and 9.f. The Board also notes that the PDP proposes almost 200 dwelling units less than the original proposal, that the increased Employment Use areas on the PDP were proposed in response to Board and protestant concerns, and that the FAR limits for Employment uses are far below what could be permitted under the MXD Regulations;

1. The PDP, pursuant to Section 127D. 7. 1. of the HCZR, proposes development that will be compatible with existing and planned vicinal land uses based on finding No. 2 and 9.b. through 9.k. In particular, the Board finds that the Petitioner pursuant to Section 127D.7.1.(1) through (7), has utilized the methods provided in Section 127D.7.1.(1),(2), (3), and (7) to ensure the proper relationship between the MXD and surrounding uses as indicated in the testimony of the Petitioner mentioned in finding 2.i., testimony that the Board accepts, that the PDP: (a) protects and enhances natural features on its boundary to provide a natural edge to the development through the location of Open Space Land Use at several locations at the edge of the subject property; (b) through its Open Space Land Use areas, provides buffering between the subject property and adjacent land uses when appropriate, and provides a connection to open space areas on adjoining land when possible; (c) through the Loop road provides a separation between uses, in effect creating separate development areas within the PDP; and (d) through the land uses proposed at its edge, provides land uses as similar to the adjacent land uses outside the development, as can be provided consonant with the Board's desired increase in the provision of Employment land use on the PDP.

The Board notes that the original revised PDP proposed either Open Space uses or residential uses equal to or less dense than the adjoining, non-MXD property in order to ensure

compatibility, and that any divergence of this policy was done in response to Board-generated modifications of the PDP to provide additional Employment Land Use areas. The Board notes that the major changes on the PDP, the provision of an Employment Land Use areas adjoining the M-1-zoned Milk Producers property and along I-95, are appropriate to and compatible with the adjoining and surrounding areas. The Board notes that the other specific methods mentioned in Section 127.D.7.l.(4), (5), and (6) of the HCZR, for ensuring development compatibility, may be more appropriately addressed by the developer and evaluated by the Planning Board and DPZ at the Comprehensive Sketch Plan stage of the MXD development plan process.

m. The PDP's open space network pursuant to Section 127.D.7.m.(1) through (4) of the HCZR will connect to existing and planned open space adjoining the development, protect major environmental features such as large forest stands or stream valleys, provide adequate useable land in appropriate locations for parks or recreational facilities, and will provide appropriate sites for needed public facilities based on finding No.2. 9.d. through 9.g.;

n. The PDP pursuant to Section 127D.7.n. of the HCZR will provide housing and jobs within pedestrian access of each other based on finding No. 2, 9.c. through 9.l.

CONCLUSIONS OF LAW

1. The proposed PDP, as modified by the Board-generated changes, meets all of the minimum requirements of Section 127C of the Howard County Zoning Regulations, including requirements as to water and sewer service, minimum area of Preliminary Development Plan, proportion of uses, permitted uses, accessory uses, residential density, requirements for employment uses, requirements for open space, bulk regulations, and other requirements. The Board accepts and adopts the Department of Planning and Zoning's evaluation of the petition

according to Section 127C in addition to its own findings in making the above findings and conclusions with respect to the criteria of Section 127C and D of the HCZR.

2. The above-described PDP has met all of the criteria for approval of a preliminary development plan contained in Section 127D.7 of the Howard County Zoning Regulations, as specified in the above findings, subject to the Petitioner's commitments, and the Board's conditions enumerated below.

3. The Board, based on the PDP's satisfaction of the several criterial for approval as contained in the Zoning Regulations, concludes that the proposed PDP, as modified by Board-generated changes, shall be approved subject to the following conditions:

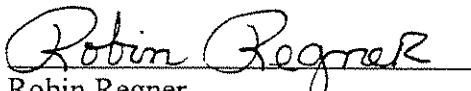
- a. That no more than thirty (30) percent of the total number of trips generated by the PDP's development, as provided in and based on the assumptions of the Petitioner's traffic analysis for this PDP, shall be permitted, as determined by DPZ in the development process, prior to the completion of the connection of the Loop Road to MD Route 216; and
- b. That no commercial/Employment use development shall occur west of I-95 on the subject property, except in relation to the development of the Western Focal Point; until the west Loop Rd./MD Route 216 connection is completed; and
- c. That no more than fifty (50) percent of the residential land use acreage may be recorded under this PDP until at least twenty (20) percent of the Employment acreage is recorded; and
- d. That the 1200 residential dwelling units approved with this PDP shall be phased over 10 years, at a rate of no more than 120 dwelling units per year, beginning in 2000, except that unused allocations may be used in later years, and that MIHU will be excluded from

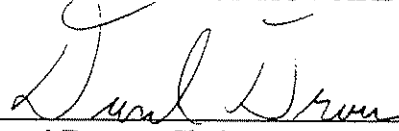
the 120 unit per year requirement.

For the foregoing reasons, the Zoning Board of Howard County, Maryland, on this 3rd day of September, 1998, having extended the decision for thirty days due to the Summer schedule, hereby **GRANTS** the Petitioner's request for approval of the PDP and Criteria as described herein, for the approximately 516.5 acres subject property located in the PEC-MXD-3 and R-SC-MXD-3 Zoning Districts, subject to the conditions as provided herein.

ATTEST:


ZONING BOARD OF HOWARD COUNTY



Robin Regner
Administrative Assistant

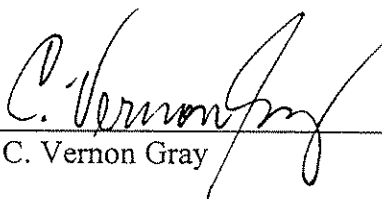

*Darrel Drown, Chairperson

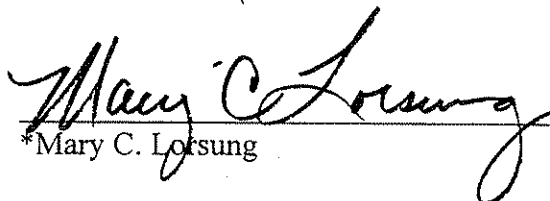
PREPARED BY HOWARD COUNTY
OFFICE OF LAW
BARBARA M. COOK
COUNTY SOLICITOR

DISSENT
*Dennis R. Schrader, Vice Chairperson


Paul T. Johnson
Deputy County Solicitor


*Charles C. Feaga


*C. Vernon Gray


*Mary C. Loring

*THE ABOVE SIGNED BOARD MEMBERS
HEREBY CERTIFY THAT THEY HAVE LISTENED TO
A RECORDING OF THE PORTIONS OF THE HEARING
FROM WHICH THEY WERE ABSENT AND HAVE
REVIEWED THE EVIDENCE OF RECORD.